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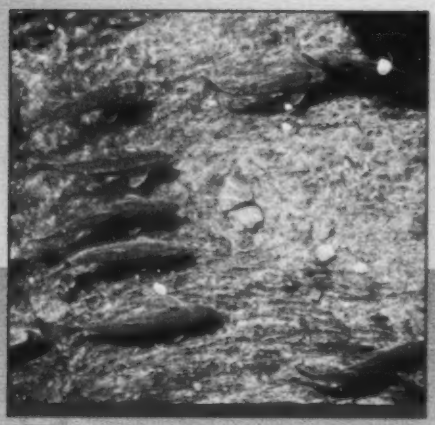

ANNUAL REPORT TO PARLIAMENT

on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

April 1, 2012
To March 31, 2013

Canada

Published by:

Communications Branch
Fisheries and Oceans Canada
Ottawa, Ontario
K1A 0E6

DFO/2013-1901

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PDF version: Cat. No. Fs1-57/2013E-PDF ISSN 1910-2356

Correct citation for this publication:

Fisheries and Oceans Canada. 2013. Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. April 1, 2012 to March 31, 2013: v + 33 p.

Internet site: http://www.dfo-mpo.gc.ca/pnw-ppe/fpp-ppp/guide-eng.html

Minister of
Fisheries and Oceans

Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

Ms. Audrey O'Brien
Clerk of the House of Commons
Room 228-N, Centre Block
House of Commons
Ottawa, Ontario
KIA OA6

Dear Ms. O'Brien:

In accordance with the provisions of section 42.1 of the *Fisheries Act*, I have the honour to present, in both official languages, two copies of the Annual Report on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act* for the fiscal year 2012-2013.

In conformity with the requirements of the Act, these copies are for tabling in the House of Commons.

Sincerely,

Gail Shea, P.C., M.P.

Attachments

Minister of
Fisheries and Oceans

Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

Mr. Gary O'Brien
Clerk of the Senate & Clerk of the Parliaments
Room 183-S, Centre Block
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. O'Brien:

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In conformity with the requirements of the Act, these copies are for tabling in the Senate.

Sincerely,

Gail Shea, P.C., M.P.

Attachments

DISCLAIMER

As part of the *Jobs, Growth and Long-term Prosperity Act* (Bill C-38), which received Royal Assent on June 29, 2012, amendments were made to the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. The new Fisheries Protection Provisions, which replace the Habitat Protection and Pollution Prevention Provisions, came into force on November 25, 2013.

The amended legislation required a modernization of Fisheries and Oceans Canada's policies and operations related to its mandate for fisheries protection. This resulted in the creation of the Fisheries Protection Program in April 2013, and the release of the Fisheries Protection Policy Statement in November 2013, which replaces the Policy for the Management of Fish Habitat (1986).

As this Report covers the period from April 1, 2012 to March 31, 2013, it refers exclusively to the *Fisheries Act* provisions and associated policy and operation framework that were in place during that period.

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Abstract

Fisheries and Oceans Canada. 2013. Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. April 1, 2012 to March 31, 2013.

This is a report on the administration of Fisheries and Oceans Canada's National Habitat Management Program and Environment Canada's Pollution Prevention Program during the 2012-2013 fiscal year. It highlights the two departments' activities.

List of Acronyms and Abbreviations

Agency	Canadian Environmental Assessment Agency
AESRD	Alberta Environment and Sustainable Resource Development
C&P	Conservation and Protection Program
CCME	Canadian Council of Ministers of the Environment
CEPA	*Canadian Environmental Protection Act*
CEAA	*Canadian Environmental Assessment Act*
CESD	Commissioner for Environment and Sustainable Development
CFIA	Canadian Food Inspection Agency
CNSC	Canadian Nuclear Safety Commission
CSAS	Canadian Science Advisory Secretariat
CSSP	Canadian Shellfish Sanitation Program
DFO	Fisheries and Oceans Canada
EA	Environmental Assessment
EC	Environment Canada
EDF	Environmental Damages Fund
EEM	Environmental Effects Monitoring
FPAC SC	Forest Products Association of Canada Science Committee
FCSAP	Federal Contaminated Sites Action Plan
HADD	Harmful Alteration, Disruption or Destruction
HMP	Habitat Management Program
MMER	*Metal Mining Effluent Regulations*
MOU	Memorandum of Understanding
NEB	National Energy Board
NGO	Non-Governmental Organization
PATH	Program Activity Tracking System for Habitat Management
PPER	*Pulp and Paper Effluent Regulations*
RA	Responsible Authority
RISS	Regulatory Information Submission System
RMF	Risk Management Framework
SARA	*Species at Risk Act*
TIA	Tailings Impoundment Area
WSER	*Wastewater System Effluent Regulations*
WWTP	Wastewater Treatment Plant

1.0 Executive Summary

Canada's freshwater and marine fish species and fish habitat play a critical role in Canada's economic prosperity and biological diversity. This Annual Report to Parliament summarizes the administration and enforcement of the fish habitat protection and pollution prevention provisions of the *Fisheries Act*[1] from April 1, 2012 to March 31, 2013.

The annual report highlights the activities of Fisheries and Oceans Canada's (DFO) National Habitat Management Program (HMP), Ecosystems and Oceans Science Sector, Conservation and Protection Program (C&P), as well as Environment Canada's (EC) Environmental Enforcement Branch and related programs.

The *Fisheries Act* contains two provisions that are applied for the conservation and protection of fish habitat that is essential to sustaining freshwater and marine fish species:

- DFO administers section 35, the key habitat protection provision, prohibiting any work, undertaking or activity that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*; and
- EC assumes the lead responsibility for the administration of subsection 36(3), the key pollution prevention provision, prohibiting the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations under the *Fisheries Act* or other federal legislation.

[1] The full text of the *Fisheries Act* can be found at http://laws-lois.justice.gc.ca/eng/acts/F-14/.

1.1 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

1.1.1 Review of Development Proposals (Referrals)

HMP activities contribute to ensuring that healthy and productive fish habitat is available to sustain the production of fish species and populations that Canadians value.

HMP staff review development proposals (referrals) to assess if a HADD of fish habitat is likely to result from a proponent's proposed work, undertaking or activity. Staff send advice to the proponent on how to proceed with their work, undertaking or activity in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat as prohibited under section 35. Advice is commonly provided in the form of a "letter of advice" or an "operational statement" for low risk activities. An "authorization" pursuant to subsection 35(2)(*b*) of the *Fisheries Act* may be issued when HADD of fish habitat cannot be avoided.

During fiscal year 2012-2013 the HMP:

- Reviewed 4464 development proposals (referrals) from across Canada to ensure compliance with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat;
- Provided advice to proponents or others on 3125 occasions; and
- Issued 199 authorizations under subsection 35(2)(*b*) of the *Fisheries Act*.

1.1.2 Compliance and Enforcement

DFO's Conservation and Protection Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fisheries habitat. The Minister of Fisheries and Oceans appoints fishery officers to enforce fisheries regulations and management plans as well as the fisheries habitat protection provisions of the *Fisheries Act*.

Enforcement of the fisheries habitat protection provisions is carried out pursuant to the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. Enforcement actions include inspections to monitor or verify compliance; investigations of alleged violations; and the issuance of warnings, inspector's directions and ministerial orders. Court actions such as prosecutions, court orders upon conviction and suits for recovery of costs can also be pursued where appropriate.

During fiscal year 2012-2013, DFO:

- Dedicated a total of 18,876 hours on fisheries habitat activities;
- Issued 33 warnings under the habitat protection provisions of the *Fisheries Act*;
- Laid 4 charges under the habitat protection provisions of the *Fisheries Act*;
- Proceeded with 4 alternative measures to prosecution;
- Issued 10 Inspector's Directions; and
- Successfully completed 7 convictions under the fisheries habitat protection provisions of the *Fisheries Act*.

1.2 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

The overall responsibility of the *Fisheries Act* lies with Fisheries and Oceans Canada. However, since 1978, Environment Canada has assumed the lead responsibility for the administration of the pollution prevention provisions of the Act - namely section 34 and sections 36 to 42. These sections of the Act deal with the deposit of deleterious substances into waters frequented by fish or places where the substances may enter such waters.

Environment Canada administers the pollution prevention provisions through a suite of activities including compliance promotion, regulations, environmental effects monitoring (EEM), water quality monitoring, enforcement, emergencies management and administrative agreements. The department's 2012-2013 activities may be summarized as follows:

- General ongoing reviews and improvements to the administration and enforcement of the pollution prevention provisions;
- Compliance promotion activities to support subsection 36(3), which prohibits the deposit of deleterious substances to waters frequented by fish unless authorized by regulation and to support notification in the event of an unauthorized deposit as required by subsection 38(5) (this section was previously number 38(4));
- Development, administration, compliance promotion and enforcement for existing regulations under subsection 36(5) for the pulp and paper sector and for metal mines, including the environmental effects monitoring (EEM) elements of those regulations;
- Development, administration, compliance promotion and enforcement for new regulations under subsection 36(5) for federal, provincial, municipal and First Nations wastewater systems;
- Contributing to environmental emergency management activities by implementing Environment Canada's pollution incident notification system and undertaking response actions to significant pollution incidents related to the deposit of deleterious substances not authorized under the Act, as per subsections 38(5) and 38(6);
- Water quality monitoring under the Canadian Shellfish Sanitation Program; and
- Administrative and notification agreements with provinces, which support effective administration of the pollution prevention provisions and associated regulations.

2.0 The Policy and Legislative Setting

2.1 Purpose of Annual Report

Section 42.1 of the *Fisheries Act* requires the Minister of Fisheries and Oceans to table an annual report to Parliament on the administration and enforcement of the fish habitat protection and pollution prevention provisions.

The Annual Report is organized under the following four parts:

- Part 1.0 presents the executive summary.
- Part 2.0 provides the legislative and policy context for the conservation and protection of fish habitat, as well as an overview of DFO's HMP.
- Part 3.0 reports on DFO activities in 2012-2013 for the administration and enforcement of the fish habitat protection provisions of the *Fisheries Act*. This part covers both the review of development proposals (referrals) by the HMP, and the support provided by the Ecosystem and Oceans Science Sector and C&P programs.
- Part 4.0 reports on the work of EC in developing regulations, policies and guidelines related to the pollution prevention provisions of the *Fisheries Act*.

2.2 Legislative Basis for the Conservation and Protection of Fish Habitat

The Government of Canada fulfills its constitutional responsibilities for seacoast and inland fisheries through the administration and enforcement of the *Fisheries Act*. This Act provides DFO with powers and authorities to conserve and protect fish habitat,[2] which is essential to sustaining freshwater and marine fish species and populations that Canadians value.

Section 35 is the key habitat protection provision of the *Fisheries Act*. This section prohibits any work, undertaking or activity that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*.

DFO administers and enforces section 35 and other related habitat protection provisions of the *Fisheries Act*, including sections 20, 21, 22, 26, 28, 30, and 32. The full text of these provisions is available on the Justice Canada Internet site.[3]

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[2] Fish habitat is defined under subsection 34(1) of the *Fisheries Act* as "spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes".

[3] *Fisheries Act* document is available at http://laws-lois.justice.gc.ca/eng/acts/F-14/.

Subsection 36(3) is the key pollution prevention provision. It prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulation under the *Fisheries Act* or other federal legislation. Regulations to authorize deposits of certain deleterious substances have been established for key industry sectors pursuant to subsection 36(5) (e.g., pulp and paper, and metal mining). EC is responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*.

The *Fisheries Act* also contains provisions that support the administration and enforcement of the habitat protection and pollution prevention provisions. These include:

- Powers for the Minister to request plans and specification for any work, undertaking or activity that might affect fish or fish habitat (section 37);
- Authority for the Minister to appoint inspectors and analysts (subsection 38(1));
- Description of inspectors' powers (including entry, search and direction of preventive, corrective or cleanup measures) (subsections 38(3) and 38(6));
- Description of offences and punishment (section 40); and
- Determination of liability when a deleterious substance has been deposited (section 42).

2.3 Policy for the Management of Fish Habitat

The *Policy for the Management of Fish Habitat* (the Policy), and its supporting operational policies, provide a framework for the administration and implementation of the habitat protection and pollution prevention provisions of the *Fisheries Act* consistent with the goal of sustainable development.

The Policy has an overall objective to "increase the natural productive capacity of habitat for the nation's fisheries resources". This is to be achieved through the Policy's three goals of conservation, restoration and development of fish habitat.

The Policy recognizes that habitat objectives must be linked and integrated with fish production objectives and with other sectors of the economy that make legitimate demands on water resources. As a result, the Policy identifies the need for integrated planning for habitat management as an approach to ensuring the conservation and protection of fish habitat that sustain fish production while providing for other uses.

A key element of the Policy is the guiding principle of "no net loss of the productive capacity of fish habitat". This principle supports the Policy's conservation goal. Prior to issuing an authorization under subsection 35(2)(*b*) of the *Fisheries Act*, DFO applies the "no net loss" guiding principle, so that unavoidable habitat losses as a result of development projects are balanced by newly created and/or restored fish habitat.

If unacceptable losses of fish habitat cannot be prevented, the Policy calls for an authorization not to be issued. Furthermore, where deleterious substances result in harm to fish or damage to fish habitat, compensation is not an option.

2.4 National Habitat Management Program

The HMP has responsibilities pursuant to the *Fisheries Act*, the *Species at Risk Act* (SARA), the *Canadian Environmental Assessment Act* (CEAA) and northern environmental assessment regimes. Consequently, the HMP is a major federal regulator affecting many development projects occurring in or around fresh and marine fish-bearing waters across Canada.

HMP activities contribute to its mandate to conserve and protect fish habitat that sustain fisheries resources that Canadians value. The program helps Canadians manage the impacts of non-fishery activities on fish habitat in the context of government-wide initiatives for sustainable development. The program uses scientific knowledge and understanding to develop regulations and policies; provides formal advice and direction; engages with individuals, organizations, and other levels of government; and manages compliance with the fish habitat protection provisions of the *Fisheries Act*.

HMP staff located in National Headquarters are responsible for the overall coordination of the delivery of the HMP, providing national policy direction, strategic advice and liaison with other DFO sectors, federal departments and national industry and non-governmental organizations (NGOs). Day-to-day delivery of the program is carried out by habitat staff located in the six DFO regions (Pacific, Central and Arctic, Quebec, Gulf, Maritimes and Newfoundland and Labrador).

3.0 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.1 Benefit for Canadians: Sustainable Aquatic Ecosystems

HMP activities are aligned with DFO's strategic outcome identified as *sustainable aquatic ecosystems*. This outcome involves the sustainable development and integrated management of resources in or around Canada's aquatic environment through oceans and fish habitat management. Specifically, HMP activities support the development and use of aquatic resources for the benefit of all Canadians through ensuring the availability of healthy and productive fish habitat. Conserving and protecting fish and fish habitat requires the cooperation of provinces, territories, industry, Aboriginal groups, individual Canadians and other stakeholders.

For more information on the impact of the Habitat Management Program activity, as it contributes to progress towards the achievement of sustainable aquatic ecosystems, please refer to the annual Departmental Performance Report for Fisheries and Oceans Canada.[4]

3.2 Administration of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.2.1 Overview

The administration of the habitat protection provisions of the *Fisheries Act* is the responsibility of DFO's HMP. The program accomplishes this in part by reviewing development proposals (known as "referrals"). Proponents may voluntarily submit information about their proposed work, undertaking or activity to determine if they comply with the habitat protection provisions of the *Fisheries Act*. The referral process enables HMP staff to review submitted proposals to assess if a HADD of fish habitat is likely to result from the proposed work, undertaking or activity. As part of its practice, the HMP applies a Risk Management Framework (RMF) consisting of three components: Aquatic Effects Assessment, Risk Assessment, and Risk Management.

As part of the referral process, program staff send advice to a project proponent indicating the requirements for the conservation and protection of fish habitat. This advice informs proponents on how to proceed with their work, undertaking or activity in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat (section 35). Advice is commonly provided in the form of a "letter of advice" or an "operational statement" for low risk activities. An "authorization" pursuant to subsection 35(2)(*b*) of the Act may be issued where HADD of fish habitat cannot be avoided.

Prior to issuing certain authorizations pursuant to the *Fisheries Act*, HMP staff must verify whether the project under review has potential to adversely affect aquatic species listed under SARA, or their critical habitat.

Prior to July 6 2012, DFO was able to exercise decision-making authority that triggered the CEAA under the following circumstances: where DFO was the project proponent; provided financial assistance; sold, leased, or otherwise transferred control or administration of federal land; or made certain regulatory decisions that enabled a project to be carried out. In such cases, DFO became a "responsible authority" under the CEAA and ensured that an EA was undertaken prior to making a decision. Typically, an EA considers broad environmental issues linked to the project, including those directly associated with fish and fish habitat.

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[4] The report is available at http://www.dfo-mpo.gc.ca/reports-rapports-eng.htm.

The *Canadian Environmental Assessment Act, 2012* (CEAA 2012) came into force on July 6, 2012 and has had several implications for DFO and its responsibilities with respect to EAs in the provinces. DFO's involvement in EAs in the territories has remained virtually unchanged except in those limited areas where CEAA 2012 applies.

Currently, responsibility for EAs under CEAA 2012 rests solely with the Canadian Environmental Assessment Agency (Agency), the Canadian Nuclear Safety Commission (CNSC) and the National Energy Board (NEB). Only those three agencies are responsible authorities (RAs).

During a standard EA or a review panel, DFO may be requested to provide specialist or expert information and knowledge to the RA or panel. This responsibility also applies in relation to a provincial process that has been deemed a substitute or equivalent EA process under CEAA 2012. Upon request, DFO is required to provide its specialist advice as to whether the carrying out of the project may cause adverse environmental effects on fish and/or fish habitat as defined in the *Fisheries Act*, or on aquatic species at risk as defined in the *Species at Risk Act* (SARA).

3.2.2 Review of Development Proposals (Referrals)

This section presents data recorded in the Program Activity Tracking System for Habitat (PATH) on review of referrals.

Table 1 presents summary data on the number of habitat referrals in 2012-2013 by work category for each DFO region.

Figure 1 illustrates the pattern in total habitat referrals by region from fiscal years 2008-2009 to 2012-2013.

Figure 2 illustrates the regional distribution of total habitat referrals for 2012-2013.

Table 1:
Summary of Habitat Referrals by Work Category
Fiscal Year 2012-2013[5]

Region	Work Categories														
	Aquaculture	Contaminated Site Remediation	Control of Nuisance Species	Dredging	Fish Offal Disposal	Habitat Improvement	In-stream Works	Log Handling	Mineral Aggregate & Oil & Gas Extraction	Shore-line Works	Structures in Water	Water Mgmt	Water-course Crossing	Other[6]	Total
Newfoundland and Labrador	3	1	0	26	0	7	9	0	54	57	96	28	131	96	**508**
Maritimes	14	1	0	28	0	11	30	0	7	116	88	58	226	29	**608**
Gulf	26	0	0	54	0	10	37	0	2	35	13	36	161	12	**386**
Quebec	2	1	0	23	3	7	39	0	5	50	24	12	71	3	**240**
Central and Arctic	1	7	4	169	0	10	383	0	48	276	146	82	684	49	**1,859**
Pacific	3	4	0	32	0	29	127	11	80	189	108	94	164	22	**863**
Total	**49**	**14**	**4**	**332**	**3**	**74**	**625**	**11**	**196**	**723**	**475**	**310**	**1,473**	**162**	**4,464**

[5] Note: For reporting purposes, the receipt of a referral by DFO is accounted for in the statistics of the same year that event actually occurred, while any DFO decisions linked to the referral could occur in a subsequent year and be accounted for separately in the statistics for that year.

[6] "Other" includes referrals identified with the work categories of "To be determined" and "Other".

Figure 1: Referrals Received by Region, 2008-2009 to 2012-2013

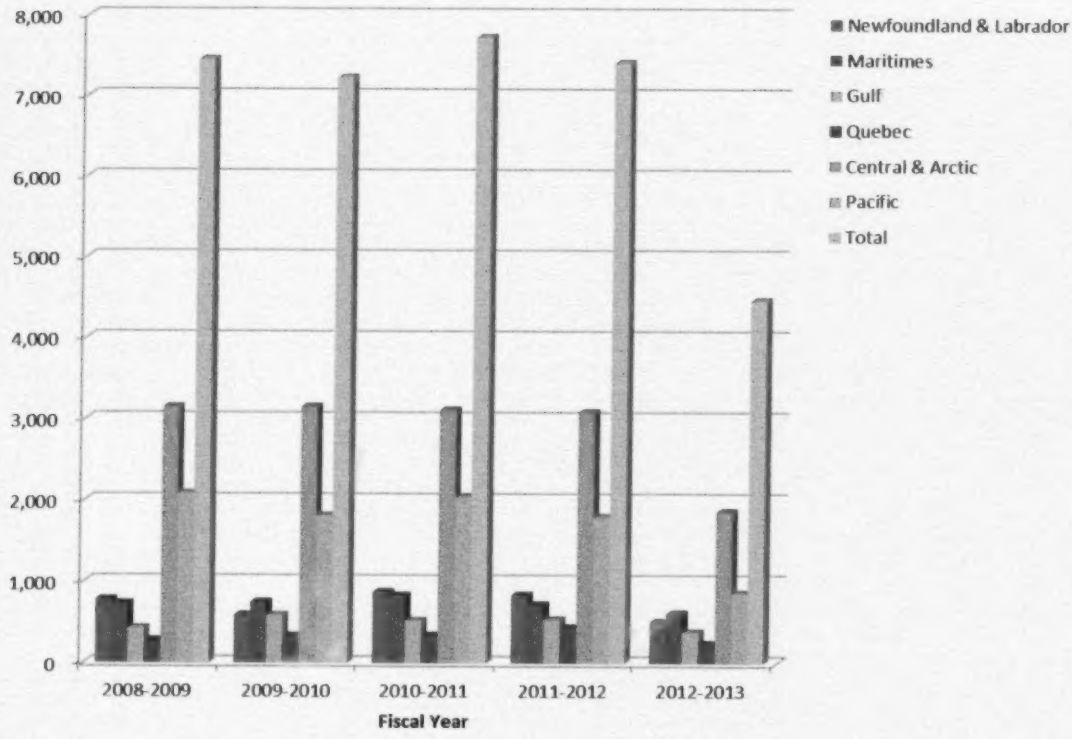
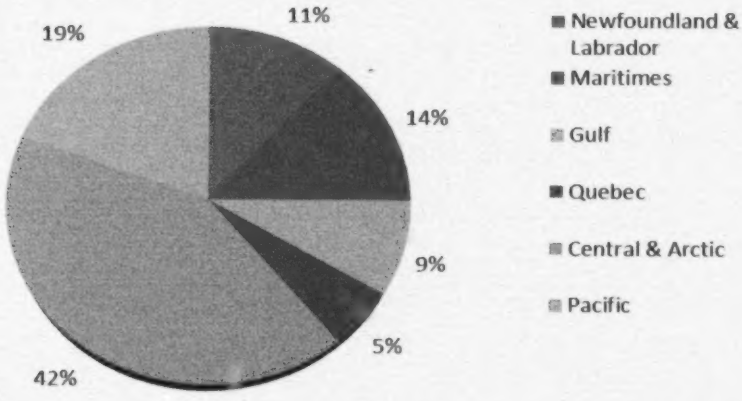


Figure 2: Percent of Referrals by Region, 2012-2013



3.2.3 Advice Provided and Authorizations Issued

Data recorded in PATH on advice provided and authorizations issued by DFO region are presented below in Table 2.

Figure 3 illustrates the pattern in advice provided, while Figure 4 illustrates the pattern in authorizations issued, by region from fiscal years 2008-2009 to 2012-2013.

Table 2:
Advice Provided and Authorizations Issued
Fiscal Year 2012-2013

Region	Advice Provided to Proponent or Others[7]	Operational Statements Provided as Advice	Authorizations Issued	Total
Newfoundland and Labrador	398	14	3	**415**
Maritimes	539	0	28	**567**
Gulf[8]	339	0	4	**343**
Quebec	386	13	26	**425**
Central and Arctic	820	98	58	**976**
Pacific	307	12	80	**399**
Total	**2,789**	**137**	**199**	**3,125**

[7] Advice provided to others includes written advice to federal agencies and provincial/territorial/other agencies, letters of advice to proponents, letters of approval to proponents, and mitigation measures provided to permitting agencies.

[8] In the Gulf region, as a result of an agreement with the Province of New Brunswick, DFO does not need to provide operational statements for streamlining certain activities.

Figure 3: Advice Provided by Region, 2008-2009 to 2012-2013[9]

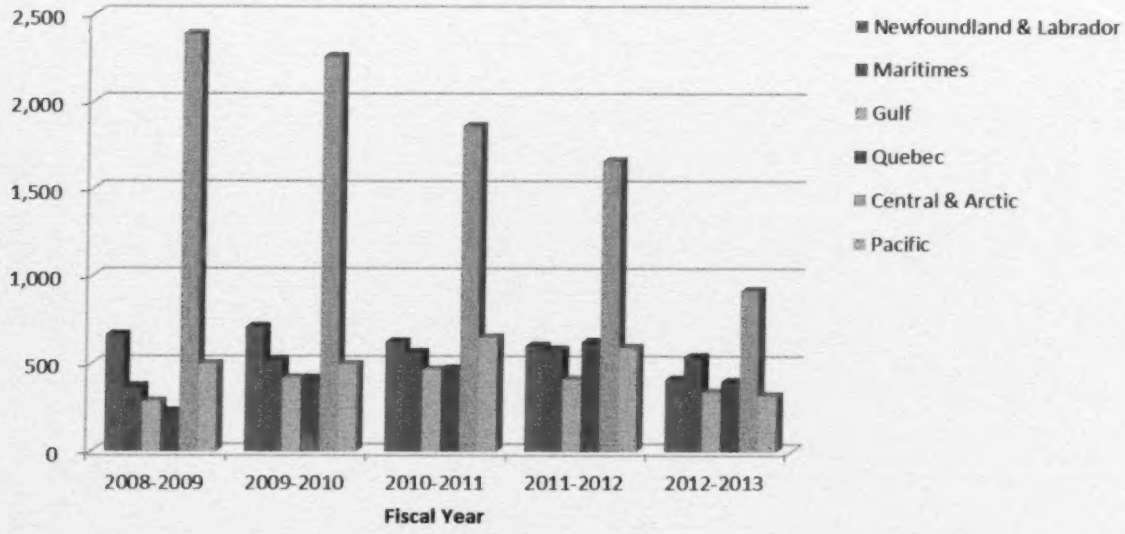
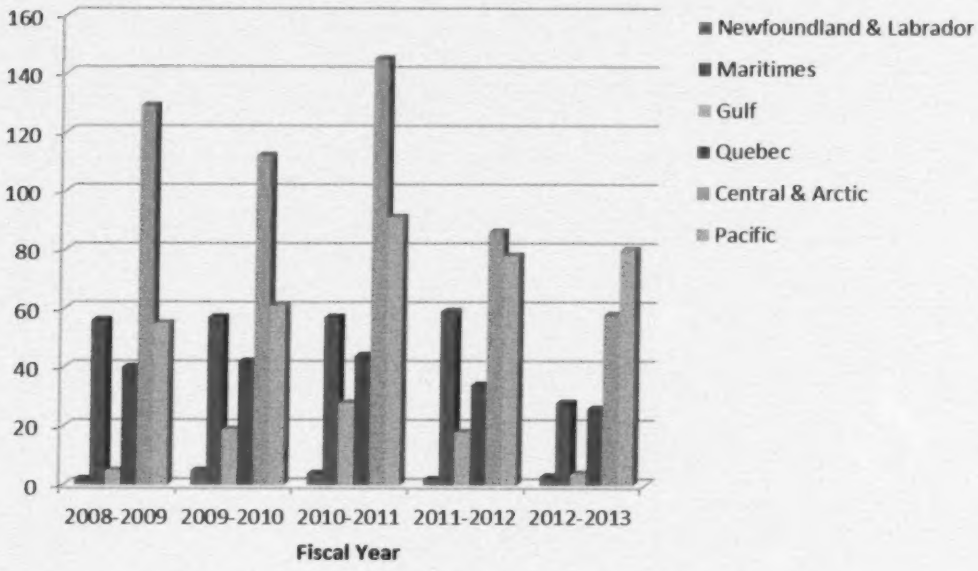


Figure 4: Authorizations Issued by Region, 2008-2009 to 2012-2013[10]



[9] As of 2005-2006, the advice provided includes providing operational statements (following receipt of referral).
[10] Notifications of use of class authorizations are not included in this figure.

3.2.4 Notifications and Use of Regulatory Streamlining Tools

As per section 1.1.1 of this report, referrals are requests submitted to DFO either directly by a proponent or indirectly by a province or territory, or other agency with respect to a proposed work, undertaking or activity that may affect fish or fish habitat. Due to the scope and number of projects possibly affecting fish or fish habitat, various forms of referral "streamlining tools" are in place to improve efficiency and effectiveness of regulatory reviews for low-risk activities.

For example, *"class" authorizations* provide a process for agricultural municipal drains in southern Ontario. The issuance of class authorizations for pre-defined drain maintenance activities eliminates the requirement for a site-specific review process. Similarly, an integrated regulatory regime for placer mining in the Yukon Territory provides a streamlined process for environmental review of placer mining proposals pursuant to the *Yukon Environmental and Socio-economic Assessment Act*.

In addition, *operational statements* provide generic guidance and specify mitigation measures needed to avoid harm to fish habitat. Proponents incorporating measures outlined in an operational statement comply with the Act and therefore do not need to submit a request for a site-specific project review.

Examples of other regional streamlining tools include the Ontario *Conservation Authority Reviews*, Pacific region's *Best Management Practices Notifications*, and Maritime and Gulf regions' *Guidelined Works* process with the provinces for specified low-risk activities.

Table 3 only exhibits quantitative information for the class authorizations and the operational statements. The class authorizations are tracked and reported nationally because they authorize a HADD of fish habitat. They are in addition to the project-specific authorizations reported in Table 2. The operational statements are a national initiative launched under the 2004 Environmental Process Modernization Program. The other "streamlining" tools mentioned above are regional initiatives and do not have a mandatory tracking requirement. It should be noted that in the case of the Maritimes and Gulf regions, the Guidelined Works process with the provinces preceded the implementation of, and are analogous to, the national operational statement process and therefore those regions do not use the operational statements as shown in Table 3.

Table 3 provides a summary of notifications of the use of class authorizations and operational statements in fiscal year 2012-2013.

Table 3:
Notifications of Use of Class Authorizations and Operational Statements
Fiscal Year 2012-2013

Region	Class Authorizations Notifications	Operational Statements Notifications	Total
Newfoundland and Labrador	0	57	**57**
Maritimes	0	0	**0**
Gulf	0	1	**1**
Quebec	0	24	**24**
Central and Arctic	271	1,731	**2,010**
Pacific	47	413	**445**
Total	**318**	**2,226**	**2,537**

3.3 Compliance and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

DFO's C&P Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fisheries habitat. The Minister of Fisheries and Oceans appoints fishery officers to enforce fisheries regulations and management plans as well as the fisheries habitat provisions of the *Fisheries Act*.

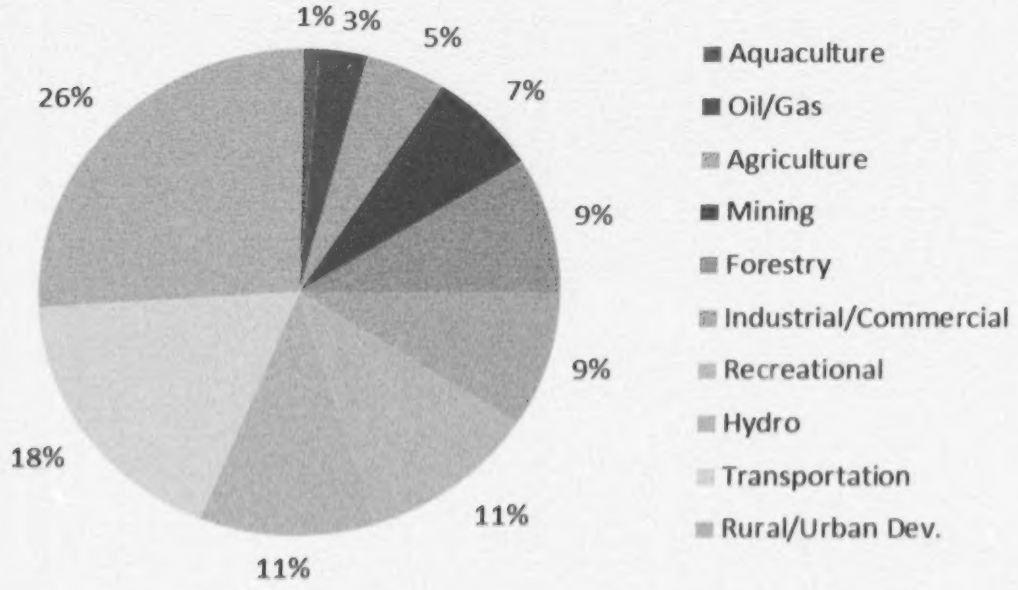
In addition to protecting fish habitat, fishery officers conduct at-sea patrols in coastal and inshore areas, monitor catches, conduct forensic investigations and audits, conduct inland patrols and provide information to fishers regarding government policies and regulations. The enforcement and compliance monitoring activities of fishery officers are key to protecting Canada's fish and fish habitat.

The C&P Directorate has adopted a three-pillar approach to the delivery of its enforcement program to address existing challenges and to integrate intradepartmental compliance issues in a comprehensive compliance program. This approach, as described under the DFO National Compliance Framework, guides the application of compliance tools organized into three pillars of compliance management. Pillar I activities, under the heading "*Education and Shared Stewardship*", include informal and formal education programs and co-management/partnership agreements. Pillar II, titled "*Monitoring, Control and Surveillance*", include activities such as land, sea and air patrols; inspections and compliance monitoring of third-party service providers; and enforcement response to non-compliance. Pillar III, titled "*Major Cases / Special Investigations*" include formal intelligence gathering and analysis, forensic audits and prosecutions.

For fiscal year 2012-2013, fishery officers dedicated a total of 18,876 hours to fisheries habitat compliance and enforcement activities. The effort and time spent on fisheries habitat compliance, identified as a single work element, represents 3.7% of the total amount of time fishery officers dedicated to other work elements.

Figure 5 illustrates the pattern in the allocation of compliance effort by habitat related activity in fiscal year 2012-2013.

Figure 5: Allocation of Compliance Effort by Habitat-Related Activity, 2012-2013



Data for Figure 5:

Main Activity	Hours	Percentage
Aquaculture	121.5	0.6
Oil/Gas	461.5	2.4
Agriculture	891.5	4.7
Mining	1,262.75	6.7
Forestry	1,755.25	9.3
Industrial/Commercial	1,775	9.4
Recreational	2,097.25	11.1
Hydro	2,156.75	11.4
Transportation	3,369.25	17.8
Rural/Urban Dev.	4,985.25	26.4
Total	**18,876**	**100**

Tables 4 and 5 summarize C&P's compliance and enforcement activities by region in fiscal year 2012-2013.

Table 4:
Summary of DFO Fisheries Habitat Enforcement Activities
Fiscal Year 2012-2013

Region	Warnings Issued	Inspector's Direction	Charges Laid	Alternative to Prosecution*
Newfoundland and Labrador	0	0	2	0
Maritimes	4	7	1	1
Gulf	1	0	0	1
Quebec	0	0	0	0
Central and Arctic	1	0	1	1
Pacific	27	3	0	1
Total	**33**	**10**	**4**	**4**

**Alternatives to prosecution include out-of-court settlements aimed at restoring unauthorized HADD of fish habitat in a timely manner.*

Table 5:
Convictions Reported under the Fisheries Habitat Protection Provisions of the *Fisheries Act*
Fiscal Year 2012-2013

Region	Section 35(1)
Newfoundland and Labrador	1
Maritimes	0
Gulf	0
Quebec	6
Central and Arctic	0
Pacific	0
Total	**7**

3.4 Support of Ecosystems and Oceans Science Sector

DFO's Ecosystems and Oceans Science Sector conducts research and provides scientific advice to assist habitat management practitioners. In collaboration with managers in the Ecosystems Management Directorate, environmental scientists identify knowledge gaps related to habitat management, conservation, restoration and improvement, and devise research projects to address those gaps. Some of the research products and scientific advice provided in fiscal 2012-2013 included:

- Assessing the effectiveness of fish habitat compensation activities in Canada, including monitoring design and metrics;
- Providing scientific advice to support the development of a Fisheries Protection Policy for Canada;
- Reviewing a strategic environmental assessment for the eastern Scotian Bank, the Slope regions of the Scotian Shelf, and the southwestern Scotian Slope;
- Project review for the potential impact of turbines on fish passage from underwater generators in the St. Lawrence River;
- Review of species of special conservation concern for the environmental assessment (Labrador - Island Transmission Link Project);
- Monitoring studies for the Fundy Tidal Energy Project and considerations for monitoring commercial scale scenarios;
- Review of Baffinland's Mary River Project final environmental impact statement; and
- Provision of information to support environmental impact assessments on the Pacific coast respecting northern abalone and cold water sponges, ship strike risk and acoustic disturbance from shipping to whales.

Research results are transferred to Habitat Management staff in the form of peer-reviewed scientific advice, scientific workshops, published reports, fact sheets, briefings, and personal consultations. Information provided can range from informal, one-on-one discussions, to regional peer-reviewed advice sessions and large-scale National Advisory Process workshops that follow a formal process to produce peer-reviewed, published advisory documents. DFO's Canadian Science Advisory Secretariat (CSAS) within the Ecosystems and Oceans Science Sector oversees the provision of formal scientific advice, and maintains a website where published reports are made available to the Canadian public.

4.0 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

The overall responsibility of the *Fisheries Act* lies with Fisheries and Oceans Canada. However, since 1978, Environment Canada has assumed the lead responsibility for the administration of the pollution prevention provisions of the Act; namely, section 34 and sections 36 to 42. These sections of the Act deal with the deposit of deleterious substances into waters frequented by fish or places where the substances may enter such waters.

Environment Canada administers the pollution prevention provisions through a suite of activities including compliance promotion, regulations, environmental effects monitoring (EEM), water quality monitoring, enforcement, emergencies management and administrative agreements. The department's 2012-2013 activities may be summarized as follows:

- General ongoing reviews and improvements to the administration and enforcement of the pollution prevention provisions;
- Compliance promotion activities to support subsection 36(3), which prohibits the deposit of deleterious substances to waters frequented by fish unless authorized by regulation and to support notification in the event of an unauthorized deposit as required by subsection 38(5) (this section was previously number 38(4));
- Development, administration, compliance promotion and enforcement for existing regulations under subsection 36(5) for the pulp and paper sector and for metal mines, including the environmental effects monitoring (EEM) elements of those regulations;
- Development, administration, compliance promotion and enforcement for new regulations under subsection 36(5) for federal, provincial, municipal and First Nations wastewater systems;
- Contributing to environmental emergency management activities by implementing Environment Canada's pollution incident notification system and undertaking response actions to significant pollution incidents related to the deposit of deleterious substances not authorized under the Act, as per subsections 38(5) and 38(6);
- Water quality monitoring under the Canadian Shellfish Sanitation Program; and
- Administrative and notification agreements with provinces that support effective administration of the pollution prevention provisions and associated regulations.

4.1 General Reviews and Improvements

As part of the *Jobs, Growth and Long-term Prosperity Act*, a number of amendments were made to the *Fisheries Act* to add greater flexibility to the regulatory instruments that can be used to more effectively manage deposits and to reduce duplication and increase compliance certainty for regulated entities. The amendments do not change the long-standing prohibition against depositing deleterious substances into waters frequented by fish.

The key amendments that relate to implementation of section 36 are as follows:

- Introduce Equivalency Agreements: Amendments under section 4.1 enable the use of equivalency agreements with provinces where provisions under the laws of a province are equivalent in effect to provisions of a regulation under the *Fisheries Act*. Equivalency agreements can reduce duplication of effort and oversight by multiple levels of government insofar as the federal regulation stands down in the province engaged by such an agreement. The *Fisheries Act* has previously only allowed for the use of administrative agreements with provinces.
- Enable Use of Ministerial Regulations: A new authority under subsection 36(5.2) was introduced, which enables the Minister, if allowed by the Governor in Council, to issue class authorizations by way of ministerial regulations (does not allow for the development of individual permits). This will allow the Minister to efficiently regulate certain deposits of deleterious substances. Enabling regulations started to be developed in 2012-2013 to establish the conditions under which ministerial regulations can be issued.
- Designation of Authorities: A new provision was introduced to allow the Governor in Council to designate a Minister other than the Minister of Fisheries and Oceans as the Minister responsible for some or all of the *Fisheries Act* pollution prevention powers and responsibilities.
- Conditions for Regulating: Amendments to the existing regulatory authority under subsection 36(4) removed the requirement that regulations authorizing deposits must set out conditions with respect to the quantity or concentration of the deleterious substance to be deposited.

These changes will support the ongoing implementation of recommendations stemming from the May 2009, Commissioner for Environment and Sustainable Development (CESD) review of the federal government's activities under the *Fisheries Act* to protect fish habitat, including improving Environment Canada's administration and enforcement of the pollution prevention provisions. In particular, these recommendations included the need to set out clearer objectives, results, expectations and accountabilities to improve the department's risk-based approach to assess and address the risks of non-compliance with the *Fisheries Act* pollution prevention provisions, to review older regulations and guidelines, to improve enforcement quality assurance and to work with Fisheries and Oceans Canada to more clearly establish expectations with respect to administration of the pollution prevention provisions.

Environment Canada has made progress over the past year with respect to the commitments it made in response to these 2009 CESD recommendations and further progress will be facilitated by the recent changes to the Act. The department has developed a Performance Management Strategy for the pollution prevention provisions, is exploring ways to improve its risk-based approach and is undertaking a review of a number of older regulations and guidelines. Dedicated resources remain in place for enforcement quality assurance. Environment Canada and Fisheries and Oceans Canada have an active dialogue underway on their respective roles and responsibilities and are committed to developing a designation order to clearly define the responsibilities of the Minister of the Environment under the Act. In addition, to support the implementation of the designation order, Environment Canada and Fisheries and Oceans Canada are renewing the Memorandum of Understanding (MOU) concerning the administration and enforcement of the pollution prevention provisions between the two departments.

4.2 Compliance Promotion for General Prohibition of Releases of Deleterious Substances to Waters Frequented by Fish

Compliance promotion relates to the planned activities that increase the awareness and understanding of regulatees with respect to the *Fisheries Act* and related regulations. Through these activities, information is provided on what is required to comply, the benefits of complying with the law as well as the consequences of non-compliance.

The approach to compliance promotion is collaborative and coordinated across the department's programs, regions and with enforcement. It is achieved using various tools and approaches such as website postings, letters, emails, brochures, site visits, responses to inquiries and information sessions.

In 2012-2013, Environment Canada undertook compliance promotion activities relating to the general pollution prevention provisions, identified in subsections 36(3) and 38 of the *Fisheries Act,* across the country for a number of sectors. This included conducting over 125 compliance promotion activities reaching 58 different facilities. These activities included group meetings, phone calls and written correspondence. Environment Canada undertakes compliance promotion primarily through the environmental assessment process (by making organizations aware of their regulatory requirements when they submit their projects for an environmental assessment), as a result of enforcement activities, and in response to specific inquiries.

- The introduction of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) changed a major component of the federal environmental assessment regime in the 2012-2013 fiscal year. CEAA 2012 applies to large-scale projects defined in regulation, which greatly reduced the number of assessments undertaken under that legislation. Environment Canada undertook reviews of environmental assessment proposals for over 100 projects, including transitional screenings, comprehensive studies and panel reviews. Reviews were used to identify issues related to *Fisheries Act* pollution prevention provisions and related regulations, and encouraged regulatees, through proactive planning of their projects, to ensure that they would

meet all regulatory requirements. These reviews included diamond, coal, potash and metal mining, oil and gas, and hydro-electric power generation projects.

- Environment Canada provided scientific and technical advice related to federal contaminated sites and potential *Fisheries Act* pollution prevention provisions implications through various avenues including the Federal Contaminated Sites Action Plan (FCSAP) and environmental assessments.

4.3 Regulations

4.3.1 Pulp and Paper

EC's analysis of the effluent data generated during 2011[11] by Canadian pulp and paper mills and off-site treatment facilities concluded that these facilities continued to have high rates of compliance with the effluent quality limits prescribed in the *Pulp and Paper Effluent Regulations* (PPER). Across the country in 2011, the regulations applied to 92 pulp and paper mills and one off-site treatment facility that deposit effluent directly into the environment. Compliance rates were over 99% for total suspended solids and biochemical oxygen demand, 95.9% for the requirement that effluent be non-acutely lethal to rainbow trout and approximately 99% for the EEM requirements.

The Government published *Regulations Amending the Pulp and Paper Effluent Regulations* in the *Canada Gazette*, Part II on 29 June 2012. The amendments removed off-site treatment facilities from the application of the *Pulp and Paper Effluent Regulations* to avoid a duplication of regulatory requirements under the *Wastewater Systems Effluent Regulations*. In addition, the amendments reduced the monitoring and administrative burden for mills depositing their effluents to wastewater systems captured by the new *Wastewater Systems Effluent Regulations*.

Environment Canada continued to provide guidance and advice to the pulp and paper sector on the environmental effects monitoring (EEM) requirements under the PPER. A national assessment of the pulp and paper mills using EEM data as of 2010 (i.e., cycles 1 to 5) was posted on the Environment Canada website in February 2013. Environment Canada presented the findings of this national assessment to stakeholders in May 2012 at the Forest Products Association of Canada Science Committee (FPAC SC). An update on preliminary results from monitoring undertaken between 2010 and 2013 (i.e., cycle 6) was also presented to FPAC SC in February 2013.

To promote compliance with regulations under the *Fisheries Act*, Environment Canada continued to provide advice to the pulp and paper sector on the requirements of the PPER. Compliance promotion activities included sending emails and letters to regulatees and continued support for the electronic reporting of data through the Regulatory Information

[11] Reporting data for the *Pulp and Paper Effluent Regulations* (PPER) are submitted through one of four electronic- and/or paper-based systems across Canada, depending upon which province a given mill is located. The most recent year for which data have been pooled, tabulated and analyzed at an aggregate level is 2011.

Submission System (RISS) for pulp and paper mills. The information system is a web-based reporting tool used by industry to report mandatory data as required under the PPER.

4.3.2 Metal Mines

EC's analysis of the effluent data generated during 2011[12] by Canadian metal mines concluded that these companies continued to have high rates of compliance with the effluent quality limits prescribed in the *Metal Mining Effluent Regulations* (MMER). The regulations applied to 112 mining facilities across the country in 2011, and the compliance rate with the limit for lead was 100%, over 99% for arsenic, copper, cyanide, nickel, zinc, radium 226 and pH, and 96.1% for total suspended solids. The regulations also require that effluent be non-acutely lethal to rainbow trout, and in 2011, the compliance rate for this requirement was 97.5%. The compliance rate for the EEM requirements was approximately 91%.

The MMER were amended once in 2011. These amendments added one water body to Schedule 2 of the regulations that lists tailings impoundment areas (TIAs), which are natural water bodies frequented by fish that are used for mine waste disposal. This water body is associated with a mine development in Saskatchewan. The MMER were also amended in 2012 to improve the EEM provisions; for example, selenium and electrical conductivity were added to the list of parameters for effluent characterization and water quality monitoring, and the reporting timeframes were adjusted.

In December 2012, Environment Canada initiated stakeholder consultations on the 10-year review of the MMER. In addition to reviewing the requirements for metal mines, the MMER review is considering possible inclusion of coal and diamond mines. The MMER review is currently ongoing.

Environment Canada continues to provide guidance and advice to the metal mining sector on the EEM program required under the MMER. The national assessment of the EEM data from the monitoring period covering 2007 to 2009 (i.e., the second phase) was posted on the Environment Canada website in May 2012. The updated metal mining EEM technical guidance document, which provides a description of how to conduct a monitoring study, was posted on the Environment Canada website in June 2012. A summary of EEM study results for the period covered by the national assessment was presented to scientists and mining stakeholders by Environment Canada at the Aquatic Toxicity Workshop in British Columbia (September 2012).

Environment Canada delivered compliance promotion activities by meeting with several mining companies across Canada, either in person or through conference calls, to discuss the regulations' requirements. Mining companies' main concerns were related to the alternatives assessment that is required as part of the regulatory process to list a tailings

[12] The most recent year for which data have been pooled, tabulated and analyzed at an aggregate level is 2011.

impoundment area on Schedule 2 of the MMER. Environment Canada explained how to prepare the report and provided support to regulatees by commenting on their reports.

4.3.3 Notification

In the event of an unauthorized deposit such as oil or chemical spill, federal and provincial/territorial authorities need to be notified in order to coordinate an adequate oversight of the response. The *Deposit Out of the Normal Course of Events Notification Regulations* prescribe verbal notification requirements for unauthorized deleterious substance releases for the purpose of subsection 38(5) of the *Fisheries Act*. In order to reduce notification burden, and duplication of effort, these regulations provide the regulated community and the public with the name and telephone number of the 24-hour authorities operating for the respective province or territory to which notifications are to be made. This means that for incidents that trigger the notification regulations, the polluter need only call one, well-known provincial or territorial number. The 24-hour operating centre that received the call then transfers the information to Environment Canada to enable timely and effective oversight and the possible provision of scientific support if necessary.

Compliance promotion activities included the provision of information to the regulated community through EC's Environmental Emergencies Program website, and the coordination of messaging through other compliance promotion activities related to other regulations under the *Fisheries Act* (e.g., MMER and PPER).

4.3.4 Wastewater

The Government published the final *Wastewater Systems Effluent Regulations* (WSER) on July 18, 2012. The WSER include national baseline effluent quality standards achievable through secondary treatment, compliance timelines, and rules on monitoring and reporting. Secondary wastewater treatment is typically a combination of physical and biological treatment that removes over 95% of the total mass of conventional pollutants such as solid materials and nutrients. The regulations also take a first step toward managing sewage overflows from combined sewers. The WSER apply to wastewater systems collecting an average daily volume of influent of 100 m^3 or more during any calendar year. Wastewater systems located in Nunavut, Northwest Territories, and in northern regions of Quebec and Newfoundland and Labrador are exempted from the WSER as more research is being done to determine treatment standards for extremely cold climates. The WSER's effluent quality standards requirements are phased in over time. Wastewater systems posing a high risk will be required to meet the effluent quality standards by the end of 2020, those posing a medium risk by the end of 2030, and those posing a low risk by the end of 2040.

The intended outcome of the WSER is to ensure that the release of wastewater effluent does not pose unacceptable risks to fish and ecosystem health or fisheries resources through the application of one set of standards in a fair, consistent, and predictable manner. The WSER are Environment Canada's main tool to implement the Canadian

Council of Ministers of the Environment (CCME) Canada-wide Strategy for the Management of Municipal Wastewater Effluent (CCME Strategy), which was endorsed by the CCME in February 2009.

Also in 2012-2013, Environment Canada developed the first phase of an online reporting system for wastewater regulatory information reporting as part of the CCME Strategy. The reporting system is being used to submit regulatory reports and applications for authorizations and assess compliance with the WSER. Reporting from regulatees commenced in January 2013.

In 2012-2013, Environment Canada's compliance promotion activities focused on informing regulatees of the publication of the final regulations and the beginning of the monitoring and reporting requirements. Overall, Environment Canada's compliance promotion officers contacted around 400 facilities in First Nations communities through 1400 activities that included 1000 emails and letters, delivering workshop sessions to over 600 participants, and attending meetings to reach First Nations and federal departments. The information included notification that the regulations were published, reminders of sampling and reporting requirements, a compliance package, factsheets and presentations on responsibilities and timelines. The main inquiries from First Nations were related to general information about the regulations, enforcement of the regulations on provincial lands and those with municipal-type agreements, and site-specific requirements.

Discussions occurred with all provinces and territories towards establishing bilateral agreements to reduce the administrative burden of WSER. The establishment of bilateral agreements represents a key federal commitment under the CCME Strategy. The addition of new authorities for equivalency agreements under the *Fisheries Act* in July 2012 adds a new mechanism for jurisdictions to consider.

Environment Canada is discussing with provinces and territories through the CCME, potential environmental effects monitoring for the WSER, as well as a regulatory approach for wastewater treatment in the far north.

4.3.5 Other Regulations and Guidelines

Environment Canada continued its review of a number of older *Fisheries Act* pollution prevention provisions regulations and guidelines to ensure that they are up to date and relevant and that regulations are enforceable. These include the *Petroleum Refinery Liquid Effluent Regulations and Guidelines*, *Chlor-Alkali Mercury Liquid Effluent Regulations*, *Meat and Poultry Products Plant Liquid Effluent Regulations*, *Potato Processing Plant Liquid Effluent Regulations*, *Fish Processing Operations Liquid Effluent Guidelines* and *Metal Finishing Liquid Effluent Guidelines*.

4.4 Water Quality Monitoring – Canadian Shellfish Sanitation Program

Under the Canadian Shellfish Sanitation Program (CSSP), Environment Canada surveys bivalve molluscan shellfish growing areas for the purposes of classifying areas for the harvesting of species such as clams, oysters, mussels and scallops. Environment Canada makes growing area classification recommendations to Fisheries and Oceans Canada (as does, separately, the Canadian Food Inspection Agency (CFIA) pursuant to its responsibilities under the CSSP Memorandum of Understanding. Based on the recommendations from EC and CFIA, Fisheries and Oceans Canada will, through its authority under the *Management of Contaminated Fisheries Regulations*, implement closures and openings of the harvesting of shellfish. In 2012-2013, approximately 30,800 marine water quality samples were collected by EC to support shellfish harvest area classification along the coastlines of the Atlantic, Pacific and Quebec (St. Lawrence Estuary) regions of Canada.

In addition to temporary closures as a result of unpredicted spills, Environment Canada continues to redefine established classifications of harvesting areas in the immediate vicinity to wastewater treatment plants (WWTP). Environment Canada has adopted a world-leading, three-dimensional hydrodynamic modeling technology to support its wastewater treatment plant assessment work. In 2012-2013, a total of 27 comprehensive wastewater treatment plants assessments were completed resulting in revised harvesting limits for some locations.

In 2012, there were 5,339 spills reported with potential impacts to shellfish areas, including discharges from wastewater treatment plants and their associated collection systems. EC and its CSSP partners continued work in 2012 to build the awareness of wastewater treatment plant operators about the importance of timely reporting pursuant to section 38(5) of the *Fisheries Act*, which contributes to protecting the public from the consumption of contaminated shellfish.

4.5 Enforcement Activities and Measures

4.5.1 Summary of Enforcement Activities

Table 6 summarizes the number of inspections, investigations and enforcement measures carried out under the *Fisheries Act* pollution prevention provisions by Environment Canada in 2012-2013.The following explanations should be noted with respect to Table 6:

> An **inspection** is an activity that involves verification of compliance with the environmental or wildlife legislation administered, in whole or in part, by EC. Only closed files using the end date are tabulated. The number of inspections relates to

the number of regulatees inspected for compliance under each of the applicable regulations.

An **investigation** is the gathering and analyzing, from a variety of sources, of evidence and information relevant to a suspected violation or where there are reasonable grounds to believe that an offence has been or is being committed. Investigations are tabulated by the number of investigation files, based on the start date of the investigation. An investigation file may also include activities relating to another piece of legislation and may include one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

The measures are tabulated at the section level of a regulation. For example, if the outcome of an inspection is the issuance of a written warning, which related to three sections of a given regulation, the number of written warnings is three.

Prosecutions: The number of prosecutions is represented by the number of regulatees that were prosecuted by charge date regardless of the number of regulations involved.

Charges: The number of charges is tabulated at the section level of the regulation by charge date, and by regulatee. For example, a regulatee violating sections 36(1) and 36(3) of the *Fisheries Act* may be charged with one count under section 36(1) and two counts under section 36(3). This is considered two charges: one for each section. Charges are counted in relation to the date the charge was laid, not the date when the case began or ended.

Convictions: The number of convictions is represented by the number of counts where the regulatee was found guilty or pleaded guilty. For example, in a case where a regulatee is found guilty of one count under section 36(1) and two counts under section 36(3), this is considered three convictions.

Counts: The number of counts is tabulated at the section level of the regulation by offence date relating to the regulatee's charge.

Table 6:
Environment Canada Enforcement Activities and Measures Carried Out Under the *Fisheries Act*
Fiscal Year 2012-2013

	Inspections[13]				Enforcement Measures				
National	Total	Off-site	On-site	Investigations[14]	Prosecutions	Charges	Convictions	Written Directives	Written Warnings
FA – *Fisheries Act*	3,414	2,337	1,077	47	4	7	2	52	181
Chlor-Alkali Mercury Liquid Effluent Regulations	5	4	1	0	0	0	0	0	0
Fish Processing Operations Liquid Effluent Guidelines	2	1	1	0	0	0	0	0	0
General Prohibition	1,723	816	907	42	4	7	2	40	89
Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments	0	0	0	0	0	0	0	0	0
Meat and Poultry Products Plant Liquid Effluent Regulations and Guidelines	27	24	3	0	0	0	0	0	0
Metal Mining Effluent Regulations	603	507	96	6	0	0	0	0	61
Petroleum Refinery Liquid Effluent Regulations and Guidelines	18	15	3	0	0	0	0	0	0
Potato Processing Plant Liquid Effluent Regulations	53	47	6	0	0	0	0	0	0
Pulp and Paper Effluent Regulations	964	910	54	4	0	0	0	11	30
Deposit Out of Normal Course of Events Notification Regulations	19	13	6	4	0	0	0	1	1
Total	**6,828**	**4,674**	**2,154**	**103**	**8**	**14**	**4**	**104**	**362**

[13] **New way of counting the number of inspections**: Only closed files using the end date are tabulated. The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.

[14] **Number of investigations**: Investigations are tabulated by the number of investigation files, based on the start date of the investigation. An investigation file may also include activities relating to another piece of legislation and may include one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

Additional Statistics

There were 59 referrals to other federal/provincial or municipal governments or departments. Table 7 presents the breakdown of investigations in 2012-2013.

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Table 7: Investigation Breakdown Fiscal Year 2012-2013	
Investigation Breakdown	**No. of Investigations**
Investigations started and ended in fiscal year 2012-2013	13
Investigations started in fiscal year 2012-2013 and still ongoing at end of fiscal year 2012-2013	34
Investigations started before 2012-2013 and ended in fiscal year 2012-2013	33
Investigations started before fiscal year 2012-2013 and still ongoing at the end of fiscal year 2012-2013	51

4.5.2 Enforcement Highlights

Alberta

On June 12, 2012, Shell Canada Limited pleaded guilty to releasing a substance harmful to fish into fish-bearing waters. The plea was entered on one count under the federal *Fisheries Act* for a contravention of the prohibition against the deposit of a deleterious substance into water frequented by fish. The offence relates to the spill of a chemical solution containing mainly sodium bisulfite into the Peace River on August 28, 2009. The company was fined $22,500 for the offence and was also ordered to pay $202,500 to the Environmental Damages Fund (EDF) to be used to promote the conservation and protection of fish and fish habitat in the Peace River.

British Columbia

On July 5, 2012, Ted Leroy Trucking Ltd. of Chemainus, British Columbia, was convicted of six charges laid under the *Fisheries Act*, the *Migratory Birds Convention Act, 1994* and the *Canada Shipping Act, 2001*, in relation to an incident on August 20, 2007. The convictions result from the partial capsizing of a barge that released petroleum products into Johnstone Strait during a commercial marine towing operation. The petroleum products were released in waters frequented by fish and by migratory birds. The Provincial Court of British Columbia sentenced the company to pay a total of $75,000. The penalty represents a $5,000 fine and an obligation to pay $70,000 for work and expenditures promoting proper management, control, conservation and/or protection of fish or fish habitat, including the Johnstone Strait area.

Newfoundland
On January 17, 2013, Coastal Shipping Limited and the former ship's master of the vessel Mokami were fined a total of $115,000 after pleading guilty to violations under the federal *Fisheries Act*. These violations are a result of the September 2009 release of approximately 70 L of diesel fuel from the vessel Mokami into the waters of Williams Harbour, Labrador. The spill occurred while fuel was being transferred from the ship to storage tanks in the community. The company and the ship's master pleaded guilty to failing to properly clean up the spill or mitigate damage, and to failing to report it to the authorities. The company was fined $100,000 and the former ship's master $15,000. The court is directing half of the total fines, or $57,500, to the Environmental Damages Fund.

New Brunswick
On April 26, 2013, Kelly Cove Salmon Ltd. pleaded guilty and was sentenced for violations of the *Fisheries Act*. The violations related to the illegal use of pesticide contributing to lobster kills in the nearby waters of southwestern New Brunswick. More specifically, Kelly Cove Salmon Ltd. pleaded guilty to releasing cypermethrin into fish-bearing waters in southwestern New Brunswick to address a major sea lice infestation in their salmon farm, knowing that it was illegal to do so. The court ordered the company to pay a total of $500,000, one of the largest and most significant penalties ever levied in Canada under the *Fisheries Act*. Some of the penalty, $50,000, will be directed to the Environmental Damages Fund, another $250,000 will be directed towards scholarships, another $100,000 will be directed to support environmental studies and research projects, and the remaining $100,000 is the court fine.

4.6 Environmental Emergencies Program

The Environmental Emergencies Program (EEP) protects Canadians and their environment from the effects of environmental emergencies through the provision of science-based expert advice and regulations under both the *Fisheries Act* and *Canadian Environmental Protection Act* (CEPA). The Environmental Emergencies Program implements the departmental pollution incident notification system through the *Deposit Out of the Normal Course of Events Notification Regulations*. In the event of a significant pollution incident, the program oversees that reasonable response actions are undertaken by the responsible party to mitigate the effects of an unauthorized deposit of deleterious substance, as per subsection 38(6) of the *Fisheries Act*. In the event of a significant pollution incident, the Environmental Emergencies Program can provide science-based expert advice, 24 hours a day, seven days a week, in collaboration with other federal, provincial, and territorial governments, municipalities and stakeholders, to inform actions that reduce the consequence of environmental emergencies.

In addition, EC's Environmental Emergencies personnel:

- may receive notifications of deposits of deleterious substances into the environment;
- access and inspect the site of the deposits or any documents in order to observe or to carry out spill response activities;
- collect relevant information and samples for the purpose of establishing the fate and effects of the pollutant, and determine environmental damage;
- issue inspector's directions requiring the responsible parties to take preventive or remedial measures if the inspector is satisfied on reasonable grounds that there is an occurrence and that immediate action is necessary;
- take all reasonable measures or cause them to be taken if the inspector is satisfied on reasonable grounds that there is an occurrence and that immediate action is necessary; and
- support enforcement actions.

4.7 Agreements with Provinces and Territories

4.7.1 Administrative Agreements

The Government of Canada has administrative agreements with two provinces, Alberta and Saskatchewan, for the cooperative administration of *Fisheries Act* activities related to section 36. In addition, a Memorandum of Understanding is being finalized with Quebec to facilitate data collection for federal environmental regulations for the pulp and paper sector.

The *Canada-Alberta Environmental Occurrences Notification Agreement* (the Agreement) establishes the terms and conditions for the cooperative administration of subsection 36(3) and the related provisions of the *Fisheries Act*, as well as regulations under the *Fisheries Act* and the *Alberta Environmental Protection and Enhancement Act*. The Agreement streamlines and coordinates the regulatory activities of Environment Canada and Alberta Environment and Sustainable Resource Development (AESRD) in relation to the protection of fisheries, and reduces duplication of regulatory requirements for regulatees.

During 2012-2013, AESRD reported 367 incidents to Environment Canada related to the *Fisheries Act*. This collaboration led to 215 (on-site and off-site) inspections and five investigations. Environment Canada conducted an additional 24 planned on-site inspections including one under the *Pulp and Paper Effluent Regulations* in accordance with the Agreement.

The *Canada-Saskatchewan Environmental Occurrences Notification Agreement* sets out the principles for cooperation and identifies a preliminary list of activities where detailed collaborative arrangements could be developed. Existing collaborative arrangements are described in the five annexes to the agreement.

In 2012-2013, the Saskatchewan Ministry of Environment reported 855 spills to Environment Canada's Enforcement Branch, of which 52 were possible *Fisheries Act* violations. Twenty-one of these led to on-site inspections of which one lead to an investigation. The remaining 31 occurrence referrals did not require on-site inspections but generated two additional off-site inspections.

The administrative agreement concerning the pulp and paper sector between the province of Quebec and the Government of Canada expired on March 31, 2012. In 2012, a Memorandum of Understanding was under development to facilitate data collection for the following federal environmental regulations for the pulp and paper sector:

- *Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations* made pursuant to the *Canadian Environmental Protection Act, 1999*;
- *Pulp and Paper Mill Defoamer and Wood Chip Regulations* made pursuant to *Canadian Environmental Protection Act, 1999*; and
- *Pulp and Paper Effluent Regulations* made pursuant to the *Fisheries Act*.

Under the Memorandum of Understanding, pulp and paper mills will continue to report their data for these regulations to the electronic reporting system provided by the province of Quebec. Both levels of government retain full responsibility for carrying out inspections and investigations and for taking appropriate enforcement measures in order to ensure compliance with their respective requirements on the part of the industry.

4.7.2 Environmental Occurrences Notification Agreements

Federal, provincial and territorial laws require, in most cases, notification of the same environmental emergency or environmental occurrence, such as an oil or chemical spill. To reduce duplication of effort, Environment Canada and Fisheries and Oceans Canada entered into Environmental Occurrences Notification Agreements (Notification Agreements) with the governments of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, the Northwest Territories and Yukon.

These Notification Agreements are supported by the *Release and Environmental Emergency Notification Regulations* under the *Canadian Environmental Protection Act, 1999*, and the *Deposit Out of the Normal Course of Events Notification Regulations* under the *Fisheries Act*.

The purpose of the Notification Agreements is to establish a streamlined notification system for persons required to notify federal and provincial/territorial governments of an environmental emergency or environmental occurrence (e.g., spill, release, etc.). Under these Notification Agreements, 24-hour authorities operating for the provinces and territories receive notifications of environmental emergencies or environmental occurrences, on behalf of Environment Canada, and transfer this information to Environment Canada.

In 2012-2013, Environment Canada continued to work with its provincial and territorial counterparts to implement the Notification Agreements. This work included the establishment of management committees and the development of standard operating procedures for the collection and processing of notifications of environmental occurrences.

To view the Notification Agreements consult
http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=5200AB4B-1